IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Writ Appeal No.852 of 2001

The Commissioner
Coimbatore City Municipal
Corporation, Town Hall
Coimbatore. .. Appellant

Vs.

Nanco Rubbers & Plastics (P) Ltd.,
rep. by its Manager
216, Thadagam Road
Velandipalayam
Coimbatore. .. Respondent

Appeal under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 15.3.2001 made in W.P.No.3262 of 2001.

This Writ petition presented to this Court under Article 226 of the Constitution of India to issue a writ of mandamus directing the respondent herein to forthwith complete assessment of the building situated at 216 Thadagam Road Velandipalayam Coimbatore and also to forthwith restore water supply to the petitoners service connection No.58047.

For Appellant : Mr.P.Srinivas
For Respondent : Mr.Janardhan

J U D G M E N T
(Delivered by P.D.DINAKARAN,J.)

The appeal is directed against the order of the learned Single Judge dated 15.3.2001 made in W.P.No.3262 of 2001 directing the appellant/Corporation to give water connection to the petitioner/respondent herein, if he is otherwise entitled to the same.

2. For the purpose of convenience, the parties are arrayed as per their rank in the writ petition.

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3.1. The undisputed facts of the case are that the petitioner Company is the absolute owner of the property of an extent of 4.69 Acres comprising of land and certain buildings at Thadagam Road, Coimbatore. In the said premises, the petitioner is carrying on business of manufacture of rubber, plastic products and also had a water service connection. As the business was not going well, the petitioner put up residential complex and on completion of the residential complex, the petitioner intimated the same to the respondent/ Corporation for property tax assessment.

3.2. Even when the residential complex was yet to be assessed for property tax, the petitioner availed water supply from his industrial water service connection by way of unauthorised extension of pipelines from the industrial water connection by fixing 'T' pipe, which necessitated the respondent/Corporation to disconnect the water connection totally to the petitioner.

3.3. Aggrieved by the disconnection of water connection, the petitioner moved this Court in W.P.No.3262 of 2001 for issuance of a writ of Mandamus to direct the respondent to forthwith complete assessment of the building situated at No.216, Thadagam Road, Velandipalayam, Coimbatore and also restore water supply to the petitioner's service connection No.58047 forthwith.

3.4. While the petitioner contended before the learned Single Judge that the disconnection was illegal for want of notice and consequently, they are entitled for restoration of water connection, the respondent/Corporation submitted that disconnection was not for non-payment of water charges, which requires an opportunity to the petitioner, but for unauthorised extension of pipelines from the industrial water connection by fixing 'T' pipe, which does not require any prior notice as per By-law 9(ix) of the Water Supply By-Laws of the Coimbatore City Municipal Corporation, Coimbatore. It was further contended by the respondent/Corporation that since the residential complex was assessed pending the writ petition, with effect from 1.4.1997, the respondent/Corporation shall consider the request of the petitioner for water connection afresh, if and when made and that they are prepared to provide water connection based on the assessment order.

3.5. The learned Single Judge, by order dated 15.3.2001 made in W.P.No.3262 of 2001 taking note of the fact that the property was subsequently assessed, held that the first limb of the mandamus sought for, viz., to

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complete assessment of the building, has become infructuous. With regard to the second limb of the mandamus sought for, viz., to restore water supply to the petitioner's service connection No.58047, the learned Single Judge, in view of the undertaking given by the learned counsel for the petitioner that they would pay the entire tax forthwith as demanded by the respondent, held that it is open to the respondent to demand and collect the property tax as and when assessment is made and for that purpose, water connection already provided to the petitioner cannot be disconnected and accordingly, directed the respondent forthwith to give water connection, if the petitioner is otherwise entitled to. Hence, the present appeal.

4. Heard both sides.

5. It is not in dispute that the petitioner was having two buildings in the same premises, one for industrial purpose and the other a residential complex with 154 tenements. The petitioner was availing water connection for industrial purpose even before the building for residential complex was constructed and the petitioner did not have separate authorised water connection for the residential complex, but they availed water supply from their industrial water service connection by way of unauthorised extension of pipelines by fixing 'T' pipe. The residential complex was assessed only pending the writ petition, but with retrospective effect, viz., from 1.4.1997.

6. From the above facts, it is clear that the disconnection of water connection suffered by the petitioner was not on account of non-payment of water charges for the water connection that was already in existence for industrial purpose, but for the unauthorised extension of pipelines to the residential complex from the industrial water connection by fixing 'T' pipe, which, in our considered opinion, does not contemplate prior notice in view of By-law 9(ix) of the Water Supply By-Laws of the Coimbatore City Municipal Corporation, Coimbatore, which reads as under:

> "9.Disconnection.- The Commissioner of the Corporation shall be at liberty to cut off water-supply without giving prior notice for the following reasons:-
> (i) to (viii) ...
> (ix) if un-authorised extension of pipe line is made.
> (x) ...
> The Commissioner of Corporation shall not be liable

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for any damage arising out of such disconnection of the water supply connection."

(emphasis supplied)

7. If that be so, the question of restoration of water supply connection does not arise. However, as water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India, the petitioner is at liberty to approach the respondent for fresh water connection and the same shall be considered by the respondent/Corporation immediately, on compliance of necessary formalities in that regard.

This writ appeal is allowed accordingly. No costs.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

The commissioner
Coimbatore City Municipal
Corporation Town Hall
Coimbatore.

+1 cc to to Mr.Sarvabhuaman Associates, Sr.No.26880.

+1 cc to P.Srinivas, Advocate Sr.No.26319.

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